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15 **UNITED STATES DISTRICT COURT**  
16 **SOUTHERN DISTRICT OF CALIFORNIA**

17

18 Nicole Newman, Individually and  
19 on Behalf of All Others Similarly  
20 Situated,

21 Plaintiffs,

22 v.  
23 Americredit Financial Services,  
24 Inc.,

25 Defendant.

26 **Case No.: '11CV3041 DMS NLS**

27 **CLASS ACTION**

28 **Class Action Complaint for  
Damages and Injunctive Relief  
Pursuant To The Telephone  
Consumer Protection Act, 47  
U.S.C § 227 et seq.**

**Jury Trial Demanded**

## INTRODUCTION

1. Nicole Newman (“Plaintiff”) brings this class action for damages, injunctive relief, and any other available legal or equitable remedies, resulting from the illegal actions of Americredit Financial Services, Inc. (hereinafter “Americredit” and/or “Defendant”), in negligently, and/or willfully contacting Plaintiff on Plaintiff’s cellular telephone, in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq., (“TCPA”), thereby invading Plaintiff’s privacy. Plaintiff alleges as follows upon personal knowledge as to herself and her own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by her attorneys.

## JURISDICTION AND VENUE

2. Jurisdiction is proper under 28 U.S.C. § 1332 because Plaintiff seeks up to \$1,500 in damages for each call in violation of the TCPA, which, when aggregated among a proposed class number in the tens of thousands, exceeds the \$5,000,000 threshold for federal court jurisdiction. Further, Plaintiff alleges a national class, which will result in at least one class member belonging to a different state than that of Defendant. Therefore, both elements of diversity jurisdiction under the Class Action Fairness Act of 2005 (“CAFA”) are present, and this Court has jurisdiction.
  3. Venue is proper in the United States District Court for the Southern District of California pursuant to 18 U.S.C. § 1391(b) and 1441(a) because the events giving rise to Plaintiff’s causes of action against Defendant occurred within the State of California and the County of San Diego.

## PARTIES

4. Plaintiff is, and at all times mentioned herein was, an individual citizen and resident of the State of California. Plaintiff is, and at all times mentioned herein was, a “person” as defined by 47 U.S.C. § 153 (10).

5. Plaintiff is informed and believed, and thereon alleges, that Americredit is, and at all times mentioned herein was, a corporation whose primary corporate address is in the state of Delaware. Americredit is, and at all times mentioned herein was, a corporation and a “person,” as defined by 47 U.S.C. § 153 (10).

6. Americredit is, and at all times mentioned herein was, a corporation and a “person,” as defined by 47 U.S.C. § 153 (10).

7. Plaintiff is informed and believes, and thereon alleges, that at all times relevant Defendant conducted business in the State of California and in the County of San Diego.

## **FACTUAL ALLEGATIONS**

8. At all times relevant, Plaintiff was an individual residing within the State of California. Plaintiff is, and at all times mentioned herein was, a “person” as defined by 47 U.S.C. § 153 (10).

9. At all times relevant Defendant conducted business in the State of California and in the County of San Diego.

10. Sometime before December 15, 2011, but after 2001, Plaintiff's brother, Clinton Bronson Newman, Jr. allegedly had a car loan from AmeriCredit or a related entity. Sometime in or about 2001 or soon after, Clinton Bronson Newman, Jr. allegedly defaulted on this account which was subsequently transferred and/or purchased and/or assigned by Americredit.

11. At no time did Plaintiff ever provide her cellular telephone to Defendant Americredit or its related entities, nor did Plaintiff ever provide Defendant Americredit with consent to call him on her cellular telephone.

12. Defendant obtained Plaintiff's cellular telephone, not from Plaintiff but through some other nefarious means.

13. On or about fall of 2011, Americredit contacted Plaintiff on Plaintiff's cellular telephone via an "automatic telephone dialing system," ("ATDS") as defined

- 1 by 47 U.S.C. § 227 (a)(1) using “an artificial or prerecorded voice” as  
2 prohibited by 47 U.S.C. § 227 (b)(1)(A).
- 3 14. During these many telephone calls Defendant used “an artificial or  
4 prerecorded voice” as prohibited by 47 U.S.C. § 227 (b)(1)(A).
- 5 15. The telephone number Americredit called was assigned to a cellular telephone  
6 service for which Plaintiff incurs a charge for incoming calls pursuant to 47  
7 U.S.C. § 227 (b)(1).
- 8 16. These telephone calls constituted calls that were not for emergency purposes  
9 as defined by 47 U.S.C. § 227 (b)(1)(A)(i).
- 10 17. Plaintiff did not provide prior express consent to receive calls on Plaintiff’s  
11 cellular telephone, pursuant to 47 U.S.C. § 227 (b)(1)(A).
- 12 18. These telephone calls by Americredit violated 47 U.S.C. § 227(b)(1).

13 **CLASS ACTION ALLEGATIONS**

- 14 19. Plaintiff brings this action on behalf of herself and on behalf of and all others  
15 similarly situated (“the Class”).
- 16 20. Plaintiff represents, and is a member of, the Class, consisting of all persons  
17 within the United States who received any telephone call from Defendant or  
18 its agent to said person’s cellular telephone made through the use of any  
19 automatic telephone dialing system or with an artificial or prerecorded voice,  
20 which call was not made for emergency purposes or with the recipient’s prior  
21 express consent, within the four years prior to the filing of this Complaint.
- 22 21. Defendant and its employees or agents are excluded from the Class. Plaintiff  
23 does not know the number of members in the Class, but believes the Class  
24 members number in the tens of thousands, if not more. Thus, this matter  
25 should be certified as a Class action to assist in the expeditious litigation of  
26 this matter.
- 27 22. Plaintiff and members of the Class were harmed by the acts of Defendant in at  
28 least the following ways: Defendant illegally contacted Plaintiff and the Class

members via their cellular telephones thereby causing Plaintiff and the Class members to incur certain cellular telephone charges or reduce cellular telephone time for which Plaintiff and the Class members previously paid, by having to retrieve or administer messages left by Defendant during those illegal calls, and invading the privacy of said Plaintiff and the Class members. Plaintiff and the Class members were damaged thereby.

23. This suit seeks only damages and injunctive relief for recovery of economic injury on behalf of the Class and it expressly is not intended to request any recovery for personal injury and claims related thereto. Plaintiff reserves the right to expand the Class definition to seek recovery on behalf of additional persons as warranted as facts are learned in further investigation and discovery.
24. The joinder of the Class members is impractical and the disposition of their claims in the Class action will provide substantial benefits both to the parties and to the court. The Class can be identified through Defendant's records or Defendant's agents' records.
25. There is a well-defined community of interest in the questions of law and fact involved affecting the parties to be represented. The questions of law and fact to the Class predominate over questions which may affect individual Class members, including the following:
  - a. Whether, within the four years prior to the filing of this Complaint, Defendant made any call (other than a call made for emergency purposes or made with the prior express consent of the called party) to a Class member using any automatic telephone dialing system or an artificial or prerecorded voice to any telephone number assigned to a cellular telephone service.
  - b. Whether Plaintiff and the Class members were damaged thereby, and the extent of damages for such violation; and

- 1                   c. Whether Defendant should be enjoined from engaging in such  
2                   conduct in the future.
- 3       26. As a person that received numerous calls using an automatic telephone dialing  
4                   system or an artificial or prerecorded voice, without Plaintiff's prior express  
5                   consent, Plaintiff is asserting claims that are typical of the Class. Plaintiff  
6                   will fairly and adequately represent and protect the interests of the Class in  
7                   that Plaintiff has no interests antagonistic to any member of the Class.
- 8       27. Plaintiff and the members of the Class have all suffered irreparable harm as a  
9                   result of the Defendant's unlawful and wrongful conduct. Absent a class  
10                  action, the Class will continue to face the potential for irreparable harm. In  
11                  addition, these violations of law will be allowed to proceed without remedy  
12                  and Defendant will likely continue such illegal conduct. Because of the size  
13                  of the individual Class member's claims, few, if any, Class members could  
14                  afford to seek legal redress for the wrongs complained of herein.
- 15       28. Plaintiff has retained counsel experienced in handling class action claims and  
16                  claims involving violations of the Telephone Consumer Protection Act.
- 17       29. A class action is a superior method for the fair and efficient adjudication of  
18                  this controversy. Class-wide damages are essential to induce Defendant to  
19                  comply with federal and California law. The interest of Class members in  
20                  individually controlling the prosecution of separate claims against Defendant  
21                  is small because the maximum statutory damages in an individual action for  
22                  violation of privacy are minimal. Management of these claims is likely to  
23                  present significantly fewer difficulties than those presented in many class  
24                  claims.
- 25       30. Defendant has acted on grounds generally applicable to the Class, thereby  
26                  making appropriate final injunctive relief and corresponding declaratory relief  
27                  with respect to the Class as a whole.
- 28

HYDE & SWIGART  
San Diego, California

**FIRST CAUSE OF ACTION**  
**NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT**  
**47 U.S.C. § 227 *Et Seq.***

31. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.
  32. The foregoing acts and omissions of Defendant constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above-cited provisions of 47 U.S.C. § 227 *et seq.*
  33. As a result of Defendant's negligent violations of 47 U.S.C. § 227 *et seq.*, Plaintiff and The Classes are entitled to an award of \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).
  34. Plaintiff and the The Classes are also entitled to and seek injunctive relief prohibiting such conduct in the future.

**SECOND CAUSE OF ACTION  
KNOWING AND/OR WILLFUL VIOLATIONS OF THE  
TELEPHONE CONSUMER PROTECTION ACT  
47 U.S.C. § 227 ET SEQ.**

35. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.
  36. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above-cited provisions of 47 U.S.C. § 227 *et seq.*
  37. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227 *et seq.*, Plaintiff and each of the The Classes are entitled to treble damages, as provided by statute, up to \$1,500.00, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).
  38. Plaintiff and the The Classes are also entitled to and seek injunctive relief prohibiting such conduct in the future.

## **PRAYER FOR RELIEF**

Wherefore, Plaintiff respectfully requests the Court grant Plaintiff and The Class members the following relief against Defendant:

**FIRST CAUSE OF ACTION FOR NEGLIGENT VIOLATION OF  
THE TCPA, 47 U.S.C. § 227 *ET SEQ.***

- As a result of Defendant's negligent violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks for himself and each Class and Subclass member \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).
  - Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such conduct in the future.
  - Any other relief the Court may deem just and proper.

**SECOND CAUSE OF ACTION FOR KNOWING AND/OR WILLFUL VIOLATION  
OF THE TCPA, 47 U.S.C. § 227 ET SEQ.**

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks for himself and each Class and Subclass member treble damages, as provided by statute, up to \$1,500.00 for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).
  - Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such conduct in the future.
  - Any other relief the Court may deem just and proper.

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## TRIAL BY JURY

Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiffs are entitled to, and demand, a trial by jury.

Date: December 29, 2011

## HYDE & SWIGART

By: /s Joshua B. Swigart  
Joshua B. Swigart  
Attorneys for Plaintiff

**HYDE & SWIGART**  
San Diego, California

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**

Nicole Newman, Individually and on Behalf of All Others Similarly Situated

**DEFENDANTS**

Americredit Financial Services, Inc.

(b) County of Residence of First Listed Plaintiff \_\_\_\_\_  
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant \_\_\_\_\_  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Hyde & Swigart  
411 Camino Del Rio South Suite 301, San Diego, CA 92108

Attorneys (If Known)

**'11CV3041 DMS NLS**

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- |  |   |
|--|---|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)  |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input type="checkbox"/> 4 Diversity<br>(Indicate Citizenship of Parties in Item III) |

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)  
(For Diversity Cases Only)

Citizen of This State	PTF	DEF	Citizen of Another State	PTF	DEF
<input type="checkbox"/> 1	<input type="checkbox"/>	<input type="checkbox"/> 1	<input type="checkbox"/>	<input type="checkbox"/> 4	<input type="checkbox"/> 4
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> 2	<input type="checkbox"/> 2	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> 3	<input type="checkbox"/> 3	<input type="checkbox"/> 5
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> 6	<input type="checkbox"/> 6	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Foreign Nation	<input type="checkbox"/>	<input type="checkbox"/>

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<b>PERSONAL INJURY</b>	<b>PERSONAL INJURY</b>	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 650 Airline Regs.	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 660 Occupational Safety/Health	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 395 Property Liability	<b>PROPERTY RIGHTS</b>	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 400 Trademark	<b>SOCIAL SECURITY</b>	<input type="checkbox"/> 850 Securities/Commodities/ Exchange
<input type="checkbox"/> 195 Contract Product Liability			<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 861 HIA (1395ff)
<input type="checkbox"/> 196 Franchise			<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 862 Black Lung (923)
	<b>REAL PROPERTY</b>	<b>CIVIL RIGHTS</b>	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 863 DIWC/DIW (405(g))
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 864 SSID Title XVI
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<b>Habeas Corpus:</b>	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 865 RSI (405(g))
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 530 General	<b>FEDERAL TAX SUITS</b>	<b>X</b> 890 Other Statutory Actions
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 550 Civil Rights		<input type="checkbox"/> 893 Environmental Matters
	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 555 Prison Condition	<b>IMMIGRATION</b>	<input type="checkbox"/> 894 Energy Allocation Act
			<input type="checkbox"/> 462 Naturalization Application	<input type="checkbox"/> 895 Freedom of Information Act
			<input type="checkbox"/> 463 Habeas Corpus - Alien Detainee	<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
			<input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 950 Constitutionality of State Statutes

**V. ORIGIN**

(Place an "X" in One Box Only)

- |   |   |  |   |  |   |  |
|---|---|--|---|--|---|--|
| <input checked="" type="checkbox"/> 1 Original Proceeding | <input type="checkbox"/> 2 Removed from State Court | <input type="checkbox"/> 3 Remanded from Appellate Court | <input type="checkbox"/> 4 Reinstated or Reopened | <input type="checkbox"/> 5 Transferred from another district (specify) _____ | <input type="checkbox"/> 6 Multidistrict Litigation | <input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment |
|---|---|--|---|--|---|--|

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

~~47 U.S.C § 227 et seq.~~ 28:1331

**VI. CAUSE OF ACTION**

Brief description of cause:

Damages and Injunctive Relief pursuant to The Telephone Consumer Protection Act (TCPA)

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION      DEMAND \$ UNDER F.R.C.P. 23      5,000,001.00+

CHECK YES only if demanded in complaint:  
**JURY DEMAND:**  Yes  No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

12/29/11

s/Joshua B. Swigart

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

### Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

**I. (a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

**II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

**III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

**IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

**V. Origin.** Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

**VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service

**VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

**VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.